

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications 24371)
and 24372)

DAVIS CREEK WATER CONSERVATION)
DISTRICT,)

Applicant,)

WILLIAM T. GRACE,)

Protestant.)

DECISION 1481

DECISION ORDERING REINSTATEMENT OF APPLICATION

BY BOARD MEMBER ADAMS:

Davis Creek Water Conservation District ("District")
having filed Applications 24371 and 24372 for permits to appropriate
unappropriated water; protests to said applications having been
filed; applicant and protestant having stipulated to proceedings
in lieu of hearing as provided by Section 737, Title 23,
California Administrative Code; an investigation having been
conducted by the State Water Resources Control Board pursuant
to said stipulation; said applications having been cancelled on
August 30, 1976, for failure to pay the annual application fee
required by Water Code Section 1535; applicant having petitioned
for reinstatement of said applications; a public hearing having
been held on March 21, 1978, to consider applicant's petition;
District and protestant having appeared and presented evidence,

the evidence received at the hearing having been duly considered, the Board finds as follows:

1. Applicant's boundaries encompass about 1,500 acres of land in the lower Davis Creek watershed in Modoc County. Davis Creek drains the western slope of the Warner Mountains; it contributes its waters to Goose Lake, a large shallow body of brackish water lying athwart the California-Oregon border. The Goose Lake drainage is a closed basin separated by a low divide from its natural outlet, North Fork Pit River.

2. Application 24371 is for a permit to divert 1,788 acre-feet per annum (afa) to offstream storage from North Fork Davis Creek. Storage would be in the proposed Johnson Slough Reservoir.

3. Application 24372 is for a permit to divert 355 afa from the same point of diversion to offstream storage in space to be created from enlargement of an existing reservoir behind Briles Dam, wherein existing storage is authorized by License 8698 (Application 9825), a privately owned entitlement.

4. Rights to the natural streamflow in the area were adjudicated by the Superior Court of California, Modoc County, and are administered by a watermaster of the Department of Water Resources. The position of applicant (and of protestant Grace, who has filed a subsequent application to appropriate from the Davis Creek system) is that water is available for appropriation by storage in excess of that needed to satisfy the decreed rights.

5. By letters dated April 1, 1976, from the Division of Water Rights (Division) to the District, in care of John P. Baker, Attorney at Law, District was notified that annual fees on subject applications would be due on May 11, 1976. No reply was received.

6. By certified letter dated May 12, 1976, from the Division to Baker, District was notified that annual fees of \$83.51 were due on subject applications and that the applications would be cancelled if payment was not made within 30 days. No reply was received.

7. On June 30, 1976, having received no response to the letters of April 1 or May 12, the Division contacted District's president, Don Jorgenson, by telephone concerning the annual application fees. Jorgenson informed the Division's representative that Baker no longer represented the District and that he (Jorgenson) had not received said letters. The Division representative told Jorgenson that the applications would not be cancelled; Jorgenson agreed to furnish agency papers appointing a new District representative and to pay the fees. Jorgenson was promptly sent forms for use in appointing a new representative and copies of the fee letters.

8. By Division Orders dated August 30, 1976, sent by certified mail to Baker, District was notified that its applications were cancelled.

9. By letter to the Division of September 20, 1976, Baker acknowledged receipt of the notice of May 12, 1976, and of the cancellation order of August 30, 1976. Baker also informed the Division that he no longer represented the District and had

not since becoming District Attorney. Baker further represented that although according to his records he had forwarded copies of both documents to District's president, the latter denied receiving the forwarded notice of May 12, 1976, but acknowledged receiving the forwarded cancellation order.

10. By letter dated September [sic], 1976, to the Division, Jorgenson acknowledged receipt of the forwarded cancellation order but denied receiving the notice of May 12, 1976, of annual fees due. Shortly after receipt of this letter, a check for the full amount of the fees was received. At the hearing on this matter, Jorgenson repeated his denial of having received said notice.

11. Protestant Grace's testimony at the hearing was directed toward questioning the feasibility of the District's project under Application 24371; his testimony did not shed light on the question of reasonable notice to District of annual fees due.

12. Applicant is a small public water agency situated in California's sparsely populated northeastern corner. The District is made up of about eight small landowners; the water sought to be appropriated by the subject applications is for irrigation use on general crops. District has no full-time or even part-time paid professional staff. Planning and engineering services on District's project have been and are continuing to

be provided by staff of the Soil Conservation Service, United States Department of Agriculture (SCS). SCS staff has prepared a document entitled "Davis Creek Irrigation and Fish and Wildlife Development RC&D Measure Plan", dated January 1977 which is a plan for development of the Johnson Slough Reservoir project under Application 24371. It is expressly found that at no time did District intend to abandon its project.

13. At hearing, Jorgenson withdrew any interest in District's Application 24372 (the diversion to Briles Reservoir) consistent with findings contained in the Plan mentioned in paragraph 12.

14. The interests of justice require reinstatement of subject applications; however, Application 24372 should stand withdrawn at applicant's request.

15. District's Application 24371 and protestant Grace's subsequent Application 24697, which is itself protested, compete for water from the Davis Creek system. While stipulations have been fully executed to proceed in lieu of hearing in both of these matters, it appears that a hearing should be held prior to determining the further allocation to be made, if any, of the very limited water resources of the Davis Creek system. (Section 737(e), Title 23, California Administrative Code.)

ORDER

IT IS HEREBY ORDERED:

1. That Applications 24371 and 24372 of Davis Creek Water Conservation District be reinstated;
2. That Application 24372 stand withdrawn; and
3. That a consolidated hearing be held on Application 24371 of Davis Creek Water Conservation District and Application 24697 of Grace, both to appropriate water from the Davis Creek stream system in Modoc County.

Dated: April 20, 1978

/s/ W. W. ADAMS
W. W. Adams, Member

/s/ JOHN E. BRYSON
John E. Bryson, Chairman

/s/ W. DON MAUGHAN
W. Don Maughan, Vice Chairman